

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte THOMAS APPLE, PAUL NOBLE, JOHN FOOTEN  
and ANDREW KLEIN

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DIRECTOR OFFICE  
TECHNOLOGY CENTER 2000

Appeal No. 2003-0938  
Application 08/736,143

ON BRIEF

**MAILED**

**DEC 16 2003**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before BARRETT, FLEMING, and DIXON, Administrative Patent Judges.

FLEMING, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an decision on appeal from the final rejection of claims 1 through 38, all the claims pending in the instant application.

**Invention**

The invention relates generally to the display of financial information using graphic symbols. More specifically, the

invention relates to the use of firm or corporate logos instead of textual abbreviations to identify securities information in a ticker-type format or in the display of other trading information. See page 1 of Appellants' specification.

Figure 1 shows a diagram of a video wall 100 composed of a matrix of video monitors 100a, 100b, etc. Video wall 100 can include static, dynamic, and real-time displays as well as combinations of such displays. Information for the displays can come from many sources. For example, video and audio information can come from cable or network news or closed circuit feeds, and the data can come either from security exchanges, such as The NASDAQ Stock Market, or from other vendor or market data. See page 6 of Appellants' specification.

Figure 23 shows one possible arrangement of database 2300 in data server 2210. Database 2300, includes four relational databases. Database 2310 contains system data, such as triggers described below. Database 2320 includes information on the companies whose securities are represented on the video wall 100. Database 2330 includes the bit maps of the logos of those companies as well as the logos of market makers and any other

entities displayed on video wall 100. Database 2340 includes data on the current status of the markets supported by the system. See page 17 of Appellants' specification. In the preferred implementation, the display data processors fetch the information for display from data server 2210. For example, if display data processors 2230 through 2239 are displaying a stock ticker, those data processors would retrieve from data server 2210 financial instrument information including identifiers and trade information. See page 18 of Appellants' specification. Using the identifiers, display data processors 2230-2239 then fetch from data server 2210, a bit map for the corporate logo associated with the identifier for a particular security. The bit map would represent the logo of the corporation that issued the security. Display data processors 2230 through 2239 would then combine bit maps with the associated trade information and create a video output of the stock tickers. See page 19 of Appellants' specification.

Claim 1 is representative of the claimed invention, and is reproduce as follows:

1. A system for dynamically displaying graphic symbols and value information for financial instruments comprising:

Appeal No. 2003-0938  
Application 08/736,143

an input port to receive a feed containing identifiers and corresponding values of financial instruments;

a filter to extract from the feed the identifiers and corresponding values of the financial instruments;

an input processor comprising a memory to store the extracted financial instrument identifiers and corresponding values;

a database that stores graphic symbols that represent entities whose financial instruments are identified by the instrument identifiers in the feed and that can be accessed by financial instrument identifiers to provide graphic symbols corresponding to the financial instrument identifiers in the feed;

a display controller for forming display signals with the graphic symbols and values corresponding to the financial instruments in the feed; and

a video wall including

a plurality of individual monitors arranged into a composite display, and with the display controller receiving the display signals to render the graphic symbols and values corresponding to the financial instruments in the feed on the individual monitors.

#### References

The references relied on by the Examiner are as follow:

Higgins	5,270,922	Dec. 14, 1993
Risberg et al. (Risberg)	5,339,392	Aug. 16, 1994
Lauer et al. (Lauer)	5,523,769	Jun. 4, 1996
	(Filing date	Jul. 1, 1994)
Rayson et al. (Rayson)	5,761,689	Jun. 2, 1998
	(Filing date	Sep. 1, 1994)

### Rejections at Issue

Claims 1 through 3, 6 through 13, 15 and 16<sup>1</sup> stand rejection under 35 U.S.C. § 103 as being unpatentable over Higgins and Lauer. Claims 4, 5, 17 through 31, 37 and 38<sup>2</sup> stand rejected under 35 U.S.C. § 103 as being unpatentable over Higgins, Lauer and Rayson. Claims 32, 33, 35 and 36 stand rejected under 35 U.S.C. § 102 as being anticipated by Higgins. Claim 34 stands rejected under 35 U.S.C. § 103 as being unpatentable over Higgins and Rayson. Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Higgins, Rayson, Lauer and Risberg.

Throughout our opinion, we make references to the briefs<sup>3</sup> and the answer for the respective details thereof.

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<sup>1</sup> Claim 16 was not mentioned in the summary of the Examiner's rejection on page 4 but was treated as rejected in the body of this rejection on page 7 of the Examiner's answer.

<sup>2</sup> Claims 37 and 38 was not mentioned in the summary of the Examiner's rejection on page 8 of the Examiner's answer but was treated as rejected in the body of this rejection on page 17 of the Examiner's answer.

<sup>3</sup> Appellants filed an appeal brief on June 4, 2002. Appellants filed a reply brief on September 25, 2002. The Examiner mailed out an office communication on January 7, 2002 stating that the reply brief has been entered.

### OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellants and the Examiner, for the reasons stated *infra*, we affirm the Examiner's rejection of claims 32, 33, 35 and 36 under 35 U.S.C. § 102 and we affirm the Examiner's rejection of claims 1 through 31, 34, 37 and 38 under 35 U.S.C. § 103.

#### **Rejection of Claims 1 through 3, 6 through 13, 15 and 16 under 35 U.S.C. § 103**

At the outset, we note that Appellants state on page 4 of the brief that claims in each group do not stand or fall together. We further note that Appellants have set forth three groups in (9) Argument found on pages 4-11 of the brief. These groups are: Group I - claims 1 to 31, 37 and 38, Group II - claims 18 to 26, 28, 29 and 34 and Group III - claims 32 to 36. We further note that the claims are not argued individually but as a single group for each of the groupings. 37 CFR § 1.192 (c)(7) (July 1, 2001) **as amended at** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellants filing the brief, states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board

Appeal No. 2003-0938  
Application 08/736,143

shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely point out differences in what the claims cover is not an argument as to why the claims are separately patentable.

We note that the rejection before us is a ground of rejection of claims 1-3, 6-13, 15 and 16. These claims are a subset of the above Group I claims. We will, thereby, consider the Appellants' claims 1-3, 6-13, 15 and 16 as standing or falling together and we will treat claim 1 as a representative claim of that group. **See also In re McDaniel**, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 CFR § 1.192 (c)(7)], the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.")

Appellants argue that Higgins fails to teach graphic symbols or company logos as required by Appellants' claim 1. Appellants argue that Higgins teaches a securities alphabetical abbreviation

in juxtaposition with the values or textual data of its trading information. See pages 4 through 6 of the brief. Appellants further argue that each of the independent claims of the Appellants' invention is directed to using graphic symbols or company logos instead of security alphabetical abbreviations in juxtaposition with values or textual data of its trading information see page 6 of Appellants' brief.

Upon our reviewing of Appellants' claim 1, we fail to find that the claim is limited to using company logos. In particular we find that the claim recites "a database that stores graphic symbols that represent entities whose financial instruments are identified by the instrument identifiers in the feed and that can be accessed by financial instrument identifiers to provide graphic symbols corresponding to the financial instrument identifiers in the feed." The only question before us is whether the term "graphic symbols" precludes the Examiner from reading it on the Higgins stock symbol generated from the identifier that is stored in the LRU list. See Higgins, column 3, lines 37 through 47 and column 6, line 46 to column 7, line 61. We further note



that Higgins states that Figure 3 mode of the data processing automatically maintains within the work station 110 RAM 111 a list (LRU) of the 300 most recently requested symbols at that station. The newer of the stock symbols requested are in the top portion of the list while the older symbols are in the bottom part of the list, with symbols being deleted if they are not requested a second time before 300 other quotations are entered at the user keyboard 112. See column 7, line 62 through column 8, line 2. Higgins teaches that the stock symbols in the LRU list are used to compare with the ticker information supplied by the New York Stock Exchange. If this security being characterized by the ticker plant message is on the LRU list stored in the database, the information is captured and stored in the computer. See column 8, lines 38 through 63. We agree with the Appellants that Higgins is not clear as to whether the stock symbols stored in the Higgins database are bit map images or whether they are ASCII code representing individual alphanumeric characters. However, we must first determine the scope of Appellants' claimed term, "graphic symbols."

As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." **Texas Digital Sys., Inc. v. Telegenix, Inc.**, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." **Texas Digital Systems, Inc. v. Telegenix, Inc.**, 308 F.3d at 1204, 64 USPQ2d at 1819 ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); **Texas Digital Systems, Inc. v. Telegenix, Inc.**, 308 F.3d at 1204, 64 USPQ2d at 1819 (citing **Liebscher v. Boothroyd**, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce

absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." *Id.* "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Id.*

In our reviewing of Appellants' specification, we fail to find any specialized definition for the term "graphic symbols." Furthermore, we note that Appellants have not argued that the term "graphic symbols" has a special meaning. However, we do note that from the background of the invention of the Appellants' specification, Appellants appear to agree that the term "graphic symbols" is broader than the term "corporate logos". We note that Appellants state that the invention is generated to the display financial information using graphic symbols and that the preferred embodiment is directed to the use of firm or corporate logos instead of textual abbreviation. See page 1 of Appellants'

specification. From Appellants' own specification, the term "graphic symbols" is a broad term in which corporate logos are a subset of the scope of this term. Furthermore, the specification gives the reader the impression that graphic symbols includes more than corporate logos.

Alphanumeric characters for text (letters, digits, punctuation marks, and other symbols) are coded for storage and data exchange in data processing systems in ASCII (American National Standard Code for Information Interchange), a 7-bit or 8-bit code (the IBM PC standard character set) (or more in extended formats). In the IBM Dictionary of Computing (10th ed., McGraw-Hill, Inc. 1993), the definition of "ASCII" states that "The ASCII set consists of control characters and graphic character." The term "graphic character" is defined as: "(1) A visual representation of a character, other than a control character, that is normally produced by writing, printing, or displaying. (T) (2) A character that can be displayed or printed." Id. The term "graphic" is defined broadly as: "A symbol produced by a process such a handwriting, drawing, or

printing. (I) (A) Synonymous with graphic symbol." Id. The term "graphic symbol" is defined as: "synonym for graphic." Id. The term "character" is defined as: "(2) A letter, digit, or other symbol that is used as part of the organization, control, or representation of data." Id. The term "symbol" is defined as: "(1) A graphic representation of a concept that has meaning in a specific context. (T) (2) A representation of something by reason of relationship, association, or convention." Id. One definition of the term "text" is: "(1) In text processing, a sequence of elements intended to convey a meaning, whose interpretation is essentially based upon the reader's knowledge of some natural language or artificial language; for example, a business letter printed on paper or displayed on a screen." Id. Copies of these definitions are supplied. "Text" refers to the nature of the symbol, not to how it is displayed. We conclude from these definitions that a "graphic symbol" can be the visual representation of either an alphanumeric character of text (letters, digits, punctuation marks, and other symbols), such as an ASCII coded character, and is not limited to an arbitrary picture. Thus, the term, "graphic symbols", reads on a visual representation of alphanumeric ASCII coded character.

The character represented by an ASCII code can be visually represented in any number of ways depending on the hardware and software; by itself, a character code says nothing about its appearance, such as its font. In all computer displays, there is some database, hardware or software, that stores a graphical image that corresponds to the character code. For example, in the old text-based operating systems, such as DOS, using monochrome monitors displaying a matrix of 25 lines by 80 columns of positions, each of the positions is represented by one of the 256 characters of the IBM PC standard character set. A character generator generates a character on the screen from a character matrix 8 pixels wide by 8 pixels high. This visual graphical image representation of the code character is a "graphic symbol." Similarly, in modern display systems, a font table is used to provide a visual graphical image representation of the coded character. This visual representation is also a "graphic symbol." Thus, the visual representation of a character or symbol (e.g., the letter "G" or the symbol "\$") by the array of pixels on a computer display is inherently a "graphic symbol."

This is also consistent with definition found in Webster's dictionary. Turning to the Webster's New World Dictionary, we find that the term "graphic" is defined as written, inscribed or recorded in letters of the alphabet, meaningful symbols, etc. Furthermore, we find another definition of the term "graphic" is a "method or process of recording or describing."<sup>4</sup> Also turning to the definition of the term "symbols" we find the definition is "a written or printed mark, letter, abbreviation, etc. standing for an object, quality, process quantity, etc."<sup>5</sup>

From Appellants' own specification and from the dictionary definitions, we find that the term "graphic symbols" is a broad term which could include bit map graphical pictures as well as any graphical image representation of alphanumeric ASCII code characters. We find that the displayed representation of Higgins security symbols are included in the scope of the Appellants' claims 1 which recites "graphic symbols."

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<sup>4</sup> Definition of "graphic" found on page 588 of Webster's New World Dictionary, 3<sup>rd</sup> Edition, 1988.

<sup>5</sup> Definition of "symbols" found on page 1356 of Webster New World Dictionary, 3<sup>rd</sup> Edition, 1988.

Appeal No. 2003-0938  
Application 08/736,143

Accordingly, in claim 1, the forming of "display signals with the graphic symbols" corresponding to the "financial instrument identifiers" is broad enough to read on displaying a visual representation of the instrument identifiers stored in Higgins. For example, representation of the stock of ABC company in Fig. 2 is a series of graphic symbols corresponding to A, B, and C.

Appellants have not made any of the arguments as to claims 1-3, 6-13, 15 and 16. 37 CFR § 1.192 (a) states:

Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17 (c) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellants in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point.



Appeal No. 2003-0938  
Application 08/736,143

Support for this rule has been demonstrated by our reviewing court in **In re Berger**, 279 F.3d 975, 61 USPQ2d 1523 (Fed. Cir. 2002), wherein the Federal Circuit Court stated that because the Appellant did not contest the merits of the rejections in his brief to the Federal Circuit court, the issue is waived.

Therefore, we will sustain the Examiner's rejection of claims 1 through 3, 6 through 13, 15 and 16 under 35 U.S.C. § 103 as being unpatentable over Higgins and Lauer.

**Rejection under 35 U.S.C. § 103 over Higgins,  
Lauer and Rayson**

Claims 4, 5 and 17 through 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Higgins, Lauer and Rayson. Appellants have argued claims 18 through 26, 28, 29 and 34 as a single group, Group II. We note that Appellants have not specifically argued claim 4 and 5 separately. However, Appellants do argue on page 6 of the brief claim 17 and 18. We will thereby consider the Appellants' claims 4, 5 and 17 through

Appeal No. 2003-0938  
Application 08/736,143

31 as being argued as a single group and standing or falling together. Thus, we will treat claims 17 and 18 as representative claims of claims 4, 5 and 17 through 31.

Parent claim 17 recites "a company logo juxtaposed with financial instruments including real-time textural data," as argued in the brief, page 6. Claim 18 requires a "source that contains bit map data corresponding to the company logo."

Appellants argue that Higgins nor Lauer motivate one of ordinary skill in the art to look to graphical symbols, corporate logos or bit map images to solve the identification problems resulted in the use of conventional stock ticker symbols. Appellants further argue that Rayson does not suggest the desirability of replacing stock ticker symbols to juxtapose a graphical symbol with financial data. Appellants argue that absent any suggestion to combine these teaching, there is no motivation found for using logos or bit map data in a manner taught and claimed by Appellants.

Appeal No. 2003-0938  
Application 08/736,143

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **In re Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must

not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

When determining obviousness, "[t]he factual inquiry whether to combine references must be thorough and searching." **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), citing **McGinley v. Franklin Sports, Inc.**, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). "It must be based on objective evidence of record." **Id.** "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617. "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 1000, 50 USPQ2d at 1617, citing **McElmurry v. Ark. Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

We find that Rayson teaches a method and word processor system for automatically replacing one or more characters of text entered by the user in a word processing document with corresponding bit map images. See Rayson, column 3, lines 6 through 22 and column 9, lines 50 through 65. Rayson further teaches that this facility gives the user a relatively easy way to automatically enter such object into a document or desire, simply by typing the characters corresponding object that is to replace those characters. See column 10, lines 5 through 8. Thus, Rayson would have lead those skilled in the art to replace text with a logo.

We now address Appellants argument that a logo requires bit map image. We find that the dictionary definition of "logo" is short for "logo type". The definition for "logo type" is a single type body or matrix containing short or often used set of letters or words.<sup>6</sup> Further, a "logo" is "[a] letter, combination or letters, or symbol that identifies a product or company." IBM Dictionary of Computing. A logo implies more than alphanumeric

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<sup>6</sup> These definition are found on page 795 of Webster's New World Dictionary, 3<sup>rd</sup> Edition, 1988.

characters. For example, the logo for International Business Machines is not just the letters "IBM," but is the letters in a certain stylized font; thus, while displaying the letters "IBM" on a monitor is a display of "graphic symbols," we do not consider it a display of a logo. Of course, a logo can be reproduced in many ways: it could be printed using a solid piece of type or a halftone image, whereas, if displayed on a graphical computer monitor, the logo would generally be stored and displayed as a bitmap. Since claim 18 expressly recites "bit map data corresponding to the company logo," it is technically correct in saying that a "logo" does not require a bit map image, but nonetheless a bit map image is required by claim 18. However, Rayson teaches that "[a] user can also apply the function to replace predefined text or a characteristic string with graphic objects such as pictures or logos" (col. 9, lines 51-54), for automatically replacing a string of characters with a graphic logo, which must inherently be a bitmap image to be displayed on a computer monitor. We find that Rayson would reasonably have suggested to one of ordinary skill in the art

that the identifiers in Higgins could be replaced with a graphic logo, even though Rayson is not in the field of stock ticker displays. Therefore, we will sustain the Examiner's rejection of claims 4, 5 and 17 through 31 under 35 U.S.C. § 103 as being unpatentable over Higgins, Lauer and Rayson.

**Rejection under 35 U.S.C. § 102**

Claims 32, 33, 35 and 36 stand rejected under 35 U.S.C. § 102 as being anticipated by Higgins. We note that Appellants have argued these claims as a single group on page 10 of the brief. We will thereby consider Appellants' claims 32, 33, 35 and 36 as standing or falling together and will treat claim 32 as a representative claim of that group.

Appellants argue that Higgins discloses stock ticker alphanumeric symbols are not graphic symbols. As we have pointed out above, we have found that "graphic symbols" reads on the graphical image displayed in Higgins from the identifier stored in the LRU list. Therefore, we will sustain the Examiner's rejection of claims 32, 33, 35 and 36 for the same reasons as stated above.

**Rejection under 35 U.S.C. § 103 over Higgins and Rayson**

Claim 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Higgins and Rayson. Appellants argue on page 10 of the brief that Higgins disclosed stock ticker alphabetic symbols not graphic symbols. However, Appellants do not argue specifically the limitations recited in Appellants' claim 34. Therefore, we will sustain the Examiner's rejection of claim 34 for the same reason as found above.

**Rejection under 35 U.S.C. § 103 over Higgins, Rayson,  
Lauer and Risberg**

Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over Higgins, Rayson, Lauer and Risberg. We note that the Appellants have not argued that the Examiner has erred in this rejection. We do note that claim 14 is included in Group I. Therefore, we will sustain the Examiner's rejection for the same reasons as we have stated for claim 1.

**Conclusion**

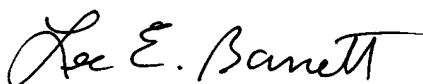
In view of the foregoing, we have sustained the Examiner's rejection of claims 32, 33, 35 and 36 under 35 U.S.C. § 102 and we have sustained the Examiner's rejection of claims 1 through 31, 34, 37 and 38.



Appeal No. 2003-0938  
Application 08/736,143

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

**AFFIRMED**



LEE BARRETT  
Administrative Patent Judge



MICHAEL R. FLEMING  
Administrative Patent Judge



JOSEPH L. DIXON  
Administrative Patent Judge

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Appeal No. 2003-0938  
Application 08/736,143

Fish & Richardson PC  
225 Franklin St.  
Boston, MA 02110